

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

AVRAM VINETO NIKA,

Petitioner,

v.

WILLIAM GITTERE, *et al.*,

Respondents.

Case No. 3:09-cv-00178-JCM-WGC

**ORDER**

In this capital habeas corpus action, on June 12, 2019, the Court granted, in part, Avram Vineto Nika's habeas petition, and judgment was entered accordingly. See Order entered June 12, 2019 (ECF No. 186); Judgment (ECF No. 187). The Court granted Nika relief relative to the penalty phase of his trial. See *id.* Nika filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) (ECF No. 189), and the Court granted that motion, in part, and expanded the certificate of appealability. See Order entered October 4, 2019 (ECF No. 200); Amended Judgment (ECF No. 201).

The Court's Amended Judgment stated, in part:

IT IS FURTHER ORDERED AND ADJUDGED that Respondents shall either (1) within 60 days from the date of this order, vacate Petitioner's death sentence and impose upon him a non-capital sentence, consistent with law, or (2) within 60 days from the date of this order, file a notice of the State's intent to grant Petitioner a new penalty-phase trial, and, within 180 days from the date of this order, commence jury selection in the new penalty-phase trial.

\* \* \*

IT IS FURTHER ORDERED AND ADJUDGED that the judgment in this action will be stayed pending the conclusion of any appellate or certiorari review in the Ninth Circuit Court of Appeals or the United States Supreme Court, or the expiration of the time for seeking such appellate or certiorari review, whichever occurs later.

1 Amended Judgment (ECF No. 201).

2 The respondents did not appeal. Nika, however, did appeal the denial of relief on  
3 certain of his claims. On September 15, 2022, the Ninth Circuit Court of Appeals  
4 affirmed. See Memorandum (ECF No. 206). On December 20, 2022, the Court of  
5 Appeals denied panel rehearing and rehearing en banc. See Order entered  
6 December 20, 2022 (ECF No. 208).

7 Nika then had until March 20, 2023, to file a petition for writ of certiorari before  
8 the United States Supreme Court (see U.S. Sup. Ct. R. 13) but did not file a petition for  
9 writ of certiorari.

10 Therefore, the time for Respondents to comply with the judgment began running  
11 on March 20, 2023. Respondents then had 60 days—until May 19, 2023—to either  
12 vacate Petitioner’s death sentence and impose upon him a non-capital sentence  
13 consistent with law or file a notice of the State’s intent to grant Petitioner a new penalty-  
14 phase trial. And, Respondents then had 180 days—until September 16, 2023—to  
15 commence jury selection in a new penalty-phase trial.

16 On May 16, 2023, the parties filed a stipulation (ECF Nos. 211, 213 (corrected  
17 stipulation), 215 (further corrected stipulation)), agreeing to extend by 60 days the time  
18 for Respondents to comply with the judgment. The parties stated in that stipulation that  
19 they, along with the Washoe County District Attorney’s Office, were in discussions  
20 regarding potential resolution of the case, but they required more time to complete  
21 those discussions. The Court found that there was good cause for the extension of time  
22 requested by the parties and approved the stipulation on May 19, 2023, extending the  
23 time for compliance with the amended judgment (ECF No. 216).

24 On July 18, 2023, the parties filed a stipulation (ECF Nos. 217, 219 (corrected  
25 stipulation)) requesting a second extension of the time, of 30 days, for compliance with  
26 the judgment. The parties stated in the stipulation that they, and the Washoe County  
27 District Attorney’s Office, were still in discussions concerning potential resolution of the  
28 case and that they required an additional 30 days to complete the discussions. The

1 Court approved that second stipulated extension of time (ECF No. 220). Respondents  
2 then had until August 17, 2023, to either vacate Petitioner's death sentence and impose  
3 upon him a non-capital sentence consistent with law or file a notice of the State's intent  
4 to grant Petitioner a new penalty-phase trial, and the Respondents then had until  
5 December 15, 2023, to commence jury selection in a new penalty-phase trial.

6 On August 17, 2023, the parties filed a stipulation (ECF No. 221) requesting a  
7 third extension of the time, of 120 days, for compliance with the judgment. The parties  
8 stated in the stipulation that they, along with the Washoe County District Attorney's  
9 Office, were still in discussions concerning potential resolution of the case and that  
10 counsel had not yet been appointed for Nika for a new penalty phase trial, and that they  
11 needed more time "[i]n order to provide the prosecution and any future-appointed  
12 defense counsel an opportunity to continue negotiations and/or to hold a new  
13 sentencing or penalty hearing." Stipulation (ECF No. 221) at 2. The Court approved that  
14 extension of time (ECF No. 222). Respondents then had until December 15, 2023, to  
15 either vacate Petitioner's death sentence and impose upon him a non-capital sentence  
16 consistent with law or file a notice of the State's intent to grant Petitioner a new penalty-  
17 phase trial, and the Respondents then had until April 5, 2024, to commence jury  
18 selection in a new penalty-phase trial.

19 On December 12, 2023, the parties filed a stipulation (ECF No. 223) requesting a  
20 fourth extension of the time, of 120 days, for compliance with the judgment. The parties  
21 state in the stipulation that they, along with the Washoe County District Attorney's  
22 Office, are still in discussions concerning potential resolution of the case, and that  
23 counsel has now been appointed for Nika for a new penalty phase trial. Stipulation (ECF  
24 No. 223) at 2. The parties continue: "Given the recent appointment of new counsel,  
25 pending negotiations, and either entry of the new sentence or a decision to pursue a  
26 new penalty hearing, the parties ask this Court to extend the judgment deadline by one-  
27 hundred twenty-six (126) days." *Id.* at 3.  
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